

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS: 97-0512 AGI

Individual Income Tax

Years: 1989, 1990, 1991, 1992, & 1993

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ISSUES

I. **Individual Income Tax.** – Imposition

Authority: 45 IAC 3.1-1-25, IC 6-3-1-13(020)

The taxpayer protests the imposition of the individual income tax.

II. **Individual Income Tax.** – Taxes paid to other states.

Authority: IC 6-3-3-3(b)

The taxpayer protests the assessment as it is unfair and represents double taxation.

STATEMENT OF FACTS

The taxpayer is a resident of North Carolina and earns consulting fees performed for an equipment company located in Indiana.

I. **Individual Income Tax.** – Imposition

DISCUSSION

The taxpayer protests the imposition of the individual income tax since the consulting fees were generally earned in North Carolina via telephone.

The taxpayer was a founder of the equipment company and retired in 1986. The taxpayer moved to North Carolina in 1986. The taxpayer retained stock in the equipment company and attended the annual stockholder meetings. Director meetings were held either over the telephone or in connection with the taxpayer's visits to the area. The taxpayer's attendance of the annual stockholder meetings and the two or three visits to the company a year constitute the taxpayer's physical presence in Indiana.

An ESOP (employee stock ownership program) was established at the company prior to the taxpayer's retirement. The taxpayer had agreed to consult with the owner-employee management for a fee. The taxpayer has not been involved in daily operations since the taxpayer's retirement in 1986.

Indiana Regulation 45 IAC 3.1-1-25 states, "All persons who are not residents of Indiana are required to report that portion of their entire income directly or constructively from or attributable to business, activities or any other source within Indiana, . . ."

To conclude, the taxpayer earned income in Indiana and had a physical presence in the state. As such, the assessment of the individual income tax is valid.

FINDING

The taxpayer's protest is denied. The taxpayer had a physical presence in the State of Indiana where income was earned.

II. **Individual Income Tax.** – Taxes paid to other states.

DISCUSSION

The taxpayer protests the imposition of the individual income tax as the taxpayer contends the assessment is onerous and unfair. The taxpayer has lived in North Carolina and has paid taxes to North Carolina on Indiana source income. As the statute has expired for the taxpayer to obtain a refund from North Carolina, the taxpayer feels the State of Indiana should waive the assessment as the Indiana assessment represents double taxation.

Indiana Code 6-3-3-3(b) states, "Whenever a nonresident person has become liable for tax to the state where he resides upon his income for the taxable year derived from sources within this state and subject to taxation under IC 6-3-2, the proportion of tax paid by him to the state where he resides that his income subject to taxation under IC 6-3-2 bears to his income upon which the tax so payable to the other state was imposed shall be credited against the tax payable by him under IC 6-3-2, but only if the laws of the other state grant a substantially similar credit to residents of this state subject to income tax under the laws of such other state, or impose a tax upon the income of its residents derived from sources in this state and exempt from taxation the income of residents of this state. No credit shall be allowed against the amount of the tax on any adjusted gross

income taxable under IC 6-3-2 that is exempt from taxation under the laws of the other state.

As North Carolina is not a credit agreement state, the taxpayer is not allowed a credit for tax paid to North Carolina. As such, the assessment is fair and equitable.

FINDING

The taxpayer's protest is denied. The assessment of Indiana tax is fair and equitable as the taxpayer is not allowed credit for tax paid to North Carolina.